Re CHAN SEE, DECD.; KUI TI ENG (w) & ORS. v. SINGAPORE FISHERY LTD.

[Workmen's Compensation (W. G. Alcock C.W.C.) June 20, 1955]

[Singapore — C. W. C. No. 82 of 1955]

Workmen's Compensation Ordinance (Cap. 70), s. 10 — Claim by persons not resident in Colony — Whether the Workmen's Compensation Ordinance is a taxing statute — Evidence of dependency of persons resident in China — District Court Rules, 1941, Orders 23 and 24.

This was a claim for workman's compensation made by the applicants, resident in China, who claimed to be dependants of the deceased. The fact of the accident, and that it arose out of and in the course of the deceased's employment with the respondent, was admitted. The questions raised in the application were: (1) whether the evidence of dependency of persons in China given in the form of letters or statements and not as affidavits, was sufficient to be accepted by the Commissioner, and (2) whether the Commissioner has power or authority to pay compensation to dependants in China. It was argued on behalf of the respondent that the Workmen's Compensation Ordinance must be construed as a taxing statute in favour of the payer, so that where there was any doubt about the applicants' rights to receive payment or the respondent's liability to make it, then a construction favourable to the payer must be adopted. It was further argued that having regard to ss. 10 and 35 of the Workmen's Compensation Ordinance the Commissioner can sanction payment to dependants outside the Colony only where reciprocal provisions exist in the country where the dependants reside.

Held: (1) the Workmen's Compensation Ordinance is not a taxing statute; (2) the provisions of ss. 10 and 35 of the Ordinance merely provide a method for the payment of compensation and are not to be construed to restrict payment of compensation only to dependants resident in the Colony or in countries where there is reciprocal provision for the payment of workmen's compensation; (3) the evidence of dependancy of the claimants should comply with the provisions of Order 24, r. 15 of the District Court Rules, which provide for the evidence to be given by affidavit, and as this requirement was not complied with in this case, the application must be dismissed.

Cases referred to:—

(1) *Pryce v. Monmouthshire Canal & Rly. Cos.* (1879) 4 App. Cas. 202.

(2) *Hunter v. Stadtische Hochseefischerei Gesellschaft* (1925) 2 K.B. 493.

(3) *Baird v. Savage or Birztan* (1906) 8 F. 438.

(4) *Krnus v. Crow's Nest Pass Coal Co.* (1912) A.C. 590.

(5) *Keegan v. Dawson* (1934) I.R. 232; 27 B.W.C.C. Supp. 136.

(6) *Smith v. Coles* (1905) 2 K.B. at p. 830.

WORKMEN'S COMPENSATION.

K. W. J. Topley (Asst. Commissioner for Labour) for the applicant.

H. E. Cashin for the respondent.

Alcock C.W.C. : — In this case a workman Chan See was employed by the Singapore Fishery Ltd., and was killed as a result of an accident on 17th March, 1954.

The respondent, who have offered to make payment on an *ex gratia* basis deny their liability to make payment to the applicants (who claim to be the dependants of the deceased) *ex jure*. The fact of the accident, and that it arose out of and in the course of the deceased's employment with the respondent, is admitted.

The questions which I have been asked to answer are five in number and as follows :—

(a) whether the amount of compensation claimed is due, or any part of that amount;

(b) whether the applicants are dependants of the deceased;

(c) how the compensation, when deposited, should be distributed;

(d) whether the evidence received from China is sufficient to satisfy the terms of the Ordinance;

(e) provided that the question of dependance is determined has the Commissioner power or authority under the Ordinance to pay to dependants in China or countries outside the Commonwealth, the compensation due?

It can be said that, if the two last named questions are answered then the same answer applies to the first three.

The two points at issue are (to put it very broadly), firstly whether the evidence of dependancy of persons in China given in the form of letters or statements and not as affidavits complying with the requirements of laws of procedure applicable to the case and submitted by the applicants, is sufficient to be accepted by this court; and, secondly, whether the Commissioner has power or authority under the Ordinance (even if that evidence were accepted) to pay compensation to dependants in China.

At the start it had been accepted by both parties that the questions required to be decided upon the old Ordinance (Workmen's Compensation Ordinance (Cap. 70)) — the new Ordinance (Workmen's Compensation Ordinance No. 31 of 1954) coming into force on the 30th of April, 1955. The accident occurred before the coming into force of the new Ordinance, and taking into account that fact, the presumption against retrospective effect of any legislation (unless there is specific provision of retrospective effect) and the provisions of section 14 of the Interpretation and General Clauses Ordinance, 1951, whereby the repeal of a written law does not (unless specially provided otherwise) affect any right acquired or remedy in respect of that right acquired under the repealed legislation, I have proceeded on the basis that the old Ordinance applies in this case. In this

particular case that point is not very material since the two sections upon which the dispute centres are not materially different. Also for that reason this judgment is given by me as Commissioner for Workmen's Compensation under the old Ordinance. If this view is incorrect, the fact is immaterial, since the same point would have arisen and been decided by myself as Arbitrator under the new Ordinance.

I note that the same view as to the effect of differences between a preceding Act and succeeding Act for workmen's compensation which amends the former and repeals it, or parts of it, is apparently shared by the editor of *Willis'* Workmen's Compensation Act (see 37th Edn. 1925 page 2).

The principal arguments of the respondent can, I think, be summarised broadly like this. Firstly, this legislation must be construed as a taxing statute in favour of the payer so that if there is any doubt the applicants' rights to receive payment or the respondent's liability to make it, then a construction favourable to the payer must be adopted. With this consideration in view, reference is made to section 10 of the old Ordinance, which is very similar to section 10 of the new Ordinance, and which provides that, in the case of death of a workman, compensation shall be made by a deposit with the Commissioner, who, thereupon makes enquiries for the purpose of determining the number of dependants of the deceased workman. By sub-section (5), in the case of an alleged dependant not being within the Colony, the Commissioner may accept the evidence in the form of a certificate from the Commissioner or other officer holding a similar position appointed under any law relating to workmen's compensation in a country in which such alleged dependant resides. The effect of these provisions — is that the dependants cannot be ascertained unless either (1) the dependants reside in the Colony or (2) reside in a place where a similar and reciprocal system of workmen's compensation exists so that the Commissioner in the Colony can obtain a certificate from his colleagues in the reciprocating country. The proviso of this sub-section, the respondent maintains, does not assist in cases where there is no reciprocal arrangement since it is the essence of the provision that the Commissioner in the Colony must apply, in the case of dependants abroad, to a colleague in the reciprocating territory. The proviso merely allows other evidence which may be available in this Colony. In this case — it is maintained — there is no reciprocity as regards a system of workmen's compensation legislation between this Colony and China where the applicants reside so that there is no means of obtaining a certificate from a fellow Commissioner in a reciprocating territory, and thus there is no means of ascertaining the dependants. Secondly, (and this is the respondent's argument on the second main point, that is, question (e)) reference is made to section 35 of the old Ordinance which is very similar to section 42 of the new Ordinance. (The principal difference is reference to the British Commonwealth in the new Ordinance in place of Her Majesty's dominions in the old). This section makes provision, where reciprocity exists, for payment of the compensation to dependants in the Colony and other parts of Her Majesty's dominions and, to adopt the same view of the legislation as a taxing statute, the argument is (to put it broadly) that the implication must be drawn from the nature of these provisions that it is only where reciprocal provisions do exist that payments can be made to dependants outside the Colony. It is maintained that section 35 is not merely machinery to facilitate the making of payments but it is only where such effective machinery is available that payments outside the Colony is sanctioned by the legislation. If reference is made to such machinery in a reciprocating Commonwealth country where it can be assumed that the maintenance of law, order and a sound judicial system is regarded as of paramount importance, then, where no such machinery is available — and these other considerations may not apply — no payment can be made. In other words it is only where there is effective machinery to enable the payments to pass into right hands that payments outside the Colony are to be sanctioned at all.

Underlying these arguments can be traced the proposition that the scheme of the legislation in the original U.K. Acts (from which our Ordinance is taken) is intended to benefit only those persons who reside in the U.K. and other countries with reciprocal legislation. The argument went so far as to maintain that, with the change in the U.K. Law whereby workmen's compensation is not a liability upon an employer but is part of a national insurance scheme so that reciprocal legislation no longer exists between the U.K. and the Colony, a dependant resident in the U.K. could not claim upon an employer in this country nor could a payment be made to a dependant in the U.K.

These arguments are ingenious and, although no authority was quoted to support them, it was maintained that they were so well accepted in the U.K. that no authority was necessary.

On considering the point however, I cannot accept the contention that the Ordinance is a taxing statute. There is a whole body of *dicta* on the proper manner of interpreting the U.K. Act in the standard text book on the subject (*Willis'* Workmen Compensation Act) and this does not contain any such suggestion. These

dicta have been quoted at length in pages 3, 4 and 5 of *Willis* 37th Edition. I can see nothing to bear out the contention advanced. If anything workmen and their dependants seem to be the favoured parties.

It is common now to refer to any legislation which requires a payment or imposes some kind of expense upon one section of the community as a taxing statute. For instance, the scheme of the Central Provident Fund has also been described as a "taxing statute" and other examples can be found of the same manner of speaking. I suggest this process ought not to be carried too far. It is very easy to sympathise with those who press forward these doctrines that the subject must be favoured when such legislation is being construed. This, as a principle of law, seems to put into concrete form a principle of political philosophy which is part of our way of life and seems now to be in danger — namely that the individual is not a mere chattel at the absolute disposal of the state (though to live his life to the full he must live in a community and be subject to restraint on his independence for that purpose). It seems however that the principle (as regards taxing statutes at least) has quite another basis than this. Basically it seems that whereas in a contractual relationship there is mutual give and take and thus the courts can look at the circumstances giving rise to the demand for payment as a whole (in case for instance, there might be some payment justified on a *quantum meruit* basis though not in the letter of the instrument supporting payment), in the case of a tax there is no such mutuality. There is no direct consideration given for the tax — unless one goes into realms of political philosophy which courts are loath to do. That being so, unless the charge for tax is clearly and unequivocally to be found in the words of the statute, payment cannot be enforced. It is not possible to look further than the statute. (See Earl Cairn L.C.'s judgment in *Pryce v. Monmouthshire Canal & Railway Cos.*[1] quoted in *Beals* Cardinal Rules of Legal Interpretation 3rd Ed. p. 493 and also the commentary on page 491 of the same authority.)

What, however, is the position of Workmen's Compensation legislation as a taxing statute. The payments when due arise neither directly out of a contract nor directly out of a statute. But, for the previous existence of a contract of employment, no question of payment can occur. Therefore, they are not a charge directly imposed on a subject by statute. Nor do Trade Unions negotiate for the inclusion of such a scheme when they bargain with employers about wages, hours of work and other conditions of employment. Thus they are not ordinarily a condition of employment. Nowadays with the strength of organised labour, being what it is, to demand such a scheme from employers, might easily lead to its acceptance as part of the normal conditions of employment. Such a bargain is not, however, necessary. The State has done the Trade Union negotiator's work for him. When the system was introduced in the late 19th century by the benevolent paternal despotism of the Prussian State — from which the U.K. copied the idea — labour was probably too weak to demand the benefits of such a scheme so the State imposed the condition instead. From this however it is clear that such payments (that is payments under the system of workmen's compensation as we know it) are a kind of statutory condition of employment. Quoting *Willis* again (at page 653) it is described thus: "The liability to pay compensation under the Act is attached to the contract of employment". Keeping Earl Cairn's *dictum* on the subject of taxing statutes in mind, and as there is something of a contractual relationship between employer and workmen in this liability, I do not think that this liability can be considered as a tax nor the legislation as a taxing statute.

Neither does the other main argument, namely — that the system of workmen's compensation works within a kind of "closed shop" whereby only those within that shop (who pay tax or owe other duties) are entitled to the benefits of the legislation to the exclusion of all outside the premises — accord with the authorities construing the former Workmen's Compensation Acts in the U.K. Where (as in the U.K. now) the system is based on State insurance, the idea may be correct. Where no such State insurance is in force, the position is different. The liability to pay compensation under the former Acts in the U.K. was regarded as attached to the contract of employment. Quoting from *Willis* again (page 653) the matter is put thus:—

> "If the contract of employment is made here, and if the work for which the workman is employed is done here, the nationality of the employer and his place of residence are immaterial, so far as the liability extends. The method of determining liability and of assessing compensation is provided by the Workmen's Compensation Act and is also one of the conditions of employment, and the alien employer, even though resident abroad, is subject to the jurisdiction of the county court having seisin of the matter, provided proper steps have been taken and notices served in accordance with the Rules (Hunter v. Stadtische Hochseefischerei Gesellschaft[2])".

Similarly, as regards the beneficiary, quoting the same text-book again: "A person otherwise entitled to the benefits of the Act is not to be deprived of them on the ground that he is an alien." See *Baird v. Savage or Birztan*[3]; *Krnus v. Crow's Nest Pass Coal Co.*[4] This last mentioned case is very much applicable to the present circumstance — a dependant resident in a foreign country was found entitled to compensation.

I do not see that that case can be distinguished from the present case. This particular branch of the subject was very carefully and fully discussed in the Irish case of *Keegan v. Dawson*[5] and from the reading of this case, the respondent's argument in this connection — though ingenious — seems contrary to the interpretation of the Act according to high authority.

If, then, the underlying basis of the argument cannot be substantiated by authority, I do not think the effects of these arguments can be maintained either. To my mind the references in section 10 and section 35 of the old Act are not to be read as restricting the dependants to those resident in the Colony or reciprocating countries nor that payment can only be made to dependants outside the Colony where machinery for such payment exists in a reciprocating country. To my mind these provisions mean what they say. In the first case the section provides that rather than go through an elaborate and complicated process of obtaining evidence in another country by some form of commission, a simple and easy method of disposing the case is provided. Similarly the purpose of section 35 is to provide a simple method of making payment and preventing the hold up of payment in cases where the Commissioner might otherwise have doubts whether the right payment goes to the right recipient. The court is — as it were — safely discharged without being put itself to the considerable trouble of ensuring that the money reaches its correct destination. In this connection the *dicta* on the manner of interpreting the Act (and thus by analogy our Ordinance) referred to above — as quoted in *Willis* — are very much in point — in particular the *dictum* of Romer L.J. in *Smith v. Coles*[6]:—

"It ought to be remembered that the Workmen's Compensation Acts are expressed not in technical but in popular language, and ought to be construed not in a technical but in a popular sense."

There is, however, still the practical objection about the nature of the evidence submitted, and in this respect, the respondent must be upheld. The taking of evidence is governed by the Workmen's Compensation Rules which by rule 38 applies certain sections of the Civil Procedure Code, *inter alia*, section 1190. These have been repealed by the immediate predecessor of the present Courts Ordinance and replaced by the District Court Rules where the appropriate orders are Orders 23 and 24. The material rule is Rule 15 of Order 24. Under this an affidavit can be taken, but the statements submitted to me do not comply with the requirements of such affidavit, and, therefore cannot be accepted. Therefore, when this point has not been waived, it is not possible for me to accept it that there is sufficient evidence of dependancy of applicants and consequently, the applicants' claims must fail on that point.

If however the facts can be evidenced by say production of proper affidavits, there does not seem to be any reason why the applicants' claim for payment should not be considered nor payments made — though no Commissioner for Workmen's Compensation is known to exist in China. The procuring of proper affidavits might be a matter — in places such as China and Indonesia — of great practical difficulty, unless legislation were introduced providing some simple machinery or providing some means of avoiding the present difficulties, but in theory it is quite possible to do this.

The points raised are however of considerable interest in a place like Singapore where so many workmen have come from overseas and leave their dependants behind, for example, in China and Indonesia — places where there are apparently no comparable systems of workmen's compensation or systems whereby evidence can be taken in a manner to satisfy the local courts.

Solicitors: *Rodyk & Davidson.*

PUBLIC PROSECUTOR v. SOONG CHAK SUNG

[C. A. (Pretheroe Ag. C.J., Wilson and Spenser Wilkinson JJ.) July 12, 1955]

[K.L. — Criminal Reference No. 1 of 1955]

Penal Code s. 411 — Dishonestly retaining stolen property — Possession of stolen property — Burden of proof of guilty knowledge — Explanation of accused.

This was a reference under s. 34 of the Courts Ordinance, 1948, of an appeal heard by the High Court against the conviction of the respondent on a charge under s. 411 of the Penal Code. (The point of law involved in the appeal which it was sought to have determined by the Court of Appeal was certified by the Public Prosecutor as follows: "Whether or not Mr. Justice Bellamy was correct in stating the law to be as follows:— 'if he (the accused) gives an explanation which in the opinion of the jury may possibly be true although they do not necessarily believe it then the Crown cannot rely upon the presumption and it must prove the guilt of the accused just as in any other criminal case'."

Held: the passage from the judgment of the learned Judge was not a correct statement of the law and the proper test to be applied in such cases is that laid down in R. v. Aves[2].

Cases referred to:—

(1) *Wang Kia Heng v. Public Prosecutor* (1951) M.L.J. 109; 2 M.L.R. 119.

(2) *Rex v. Aves* (1950) 2 All E.R. 330; 34 Cr. App. R. 159.

(3) *Rex v. Garth* (1949) 1 All E.R. 773; 33 Cr. App. R. 100.